

CHAPTER 10 AVERAGE INCOME

BACKGROUND

The Consolidated Appropriations Act of 2018 (the Act) permanently established income averaging as a third minimum set-aside election.

COMPLIANCE MONITORING

Properties funded with Low Income Housing Tax Credits (Tax Credits) must comply with requirements of IRC Section 42 for the full term of the compliance and extended use periods, as evidenced by a Declaration of Land Use Restrictive Covenants and/or Land Use Restriction Agreements (LURC and/or LURA). Properties that select the average income designation set aside must comply with the Tax Credit compliance monitoring requirements within this manual, [the DCA Income Averaging Policy](#), and the additional monitoring requirements found within this section of this manual for Average Income.

A. Federal Statutory Requirements:

1. Under Internal Revenue Code (IRC) Section 42(g)(1)(C)(ii)(I) owners designate the income and rent limitation of each unit. These designations must average 60%; owners do not need to maintain an average among tenant household incomes.
2. The designated levels may be only 20%, 30%, 40%, 50%, 60%, 70%, and/or 80% of Area Median Income (AMI).
3. The election is irrevocable once made on Form 8609.
4. Under IRC § 42(g)(1)(C)(i) a property is qualified when 40% or more of the total units:
 - are rent restricted to and
 - occupied byhouseholds at or below the limitation designated with respect to the unit.
5. IRC § 42(g)(2)(D)(iii) contains a distinct Next Available Unit Rule (NAUR) for income averaging. Owners should consult with compliance experts on how it will work with market rate units.
6. The 30% AMI level under the Housing Credit is not the same as the Extremely Low-Income (ELI) restriction under the National Housing Trust Fund. Owners of properties with both sources should be mindful of the difference.

B. Average Income Designations:

1. At least 40% of the housing units must be designated for tenants whose combined incomes average to 60% or less of the AMI. A property is in compliance if the combined average incomes are met by the end of the first year of the owner's credit and compliance period, and continues to be met each year on December 31st, throughout the compliance period.

2. The average income set-aside must be elected on Form 8609.
3. Owners of developments with more than one building will indicate on the Forms 8609 to treat all of them as part of a multiple building project (checking “Yes” on line 8b).
4. Designations are made at the time of application.
5. Average Income designations must be determined by the number of designations per unit sizes (e.g., Seven (2) bedrooms at 50% and ten (1) bedrooms at 40%).
6. The average income designations shall be stated in Exhibit “B” of the LURC and/or LURA and shall reflect the Form 8609 election prior to the first building being placed in service.

C. Applicable Fraction:

1. A housing unit is not included in the numerator of the applicable fraction if it meets one or more of the following criteria (not to be considered an exhaustive list):
 - The unit is not habitable
 - The unit is occupied by a household that violates the student status rule
 - The unit is occupied by a nonqualified household
 - The unit is vacant and was last occupied by a nonqualified household
 - The unit is a market rate unit
2. Credits may not be claimed if a unit is deemed out of compliance.
3. Compliance may be restored at the end of the taxable year in the compliance period in which the average income designation is again met.
4. The submission of Form 8823 by DCA, identifying non-compliance with the average income designations, will not be delayed even if the property demonstrates that the average income designation will be restored by the end of the taxable year in the compliance period.

D. Income compliance

1. DCA shall monitor for the correct application of income limits to tenant households and shall confirm qualified households at their respective move-in date.

E. Rental rate compliance

1. Tenant paid rent for a housing unit is determined by the average income designation and shall not be determined using the tenant’s income.
2. Tenant paid rent may never exceed the amount of the average income designation and the federal household income eligibility restrictions. Tenant paid rent may be lower than the rent amount of the designation.

F. Next Available Unit Rule

1. When a household unit is determined to be over-income, the unit with the lowest average income designation should be occupied first, to restore the average income for the property.
2. If a low-income unit in a property becomes vacant, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to a qualifying household before any units can be rented to non-qualified households. The owner or manager must be able to document reasonable attempts to rent the vacant units to eligible tenants.
3. Only units that have been previously occupied by an eligible household and are suitable for occupancy may be included as a qualifying low-income unit for compliance purposes. If a unit has never been occupied by an eligible household or has been vacated by a market rate household, that unit is not counted as a qualifying low-income unit.

G. Parity

1. Parity of average income designations shall be achieved when housing units are designated in the absence of heavily weighted distributions of the average levels.
2. Parity in unit designations shall be approved by DCA prior to the 8609 election and prior to a commitment in Exhibit "B" of the LURC and/or LURA.

H. Reporting

1. Compliance of the average income designations will be reviewed annually during:
 - Regularly scheduled file audit reviews
 - A monthly compliance internal reporting analysis
 - Annual Owner Certification (AOC)
2. DCA will review the property's average income percentage each year on December 31st.
3. DCA reserves the right to request a rent roll at any given time. Each property that has elected average income designations shall submit a rent roll spreadsheet with the AOC, dated December 31st, including the following:
 - Parity matrix
 - Unit Number
 - Square footage
 - Rental rate
 - Average income designation
 - Move-in date
 - Next Available Unit (NAU), if applicable, with NAU form

I. Transfers

1. A housing unit included in the property's average income percentage that transfer units within the property shall be subject to the average income designation of the new unit.
2. A housing unit designation may be swapped for an existing designation when transferring a unit on the property and for purposes of maintaining compliance with the average income for the property.

J. Management Company Requirements

1. **Training:** A property owner or a management company acting as an agent to the owner of a property that has elected average income designation must attend average income training prior to the first building being placed in service and every year thereafter for a three (3) year period. Average Income training should be completed by a Regional Manager or Compliance Manager and a certificate of completion must be submitted to DCA.

A determination of average income non-compliance may result in the loss of the management company's approval status and shall impact scoring for future funding applications by the property owner. A satisfactory review of average income compliance may result in the removal of the average income training requirement.

2. **Policy and Procedure Submission:** Following the 8609 election for average income and prior to the first unit being leased, a property must submit their average income internal compliance monitoring policy and procedures to DCA. Property policy and procedures must include internal compliance monitoring processes for:
 - Property waitlist
 - Transfer requests
 - Recertifications
 - Marketing plan

K. NON-COMPLIANCE

1. Federal non-compliance shall be reported on Form 8823 and submitted to the IRS in accordance with Section 42. If a housing unit no longer qualifies as a Tax Credit unit and the overall property income average exceeds 60% of the AMI, DCA shall submit Form 8823 to the IRS with box 11e selected.
2. All State and Federal non-compliance shall impact the property owner's future Qualified Application Plan (QAP) application scoring for compliance monitoring, the management company's status on the approved management company list, and the overall rating of the property's performance.